



## COLORADO TASK FORCE ON LAWYER WELL-BEING

### MEETING MINUTES

September 12, 2018, 12:45-4:00 p.m.

Colorado Supreme Court Conference Room, Fourth Floor

Ralph Carr Justice Center

2 East 14th Avenue

Denver, Colorado 80203

#### **I. Welcome, Introduction, and a View from the Bench**

Justice Márquez welcomed members to the first meeting of the Colorado Task Force on Lawyer Well-Being (Task Force). She thanked them for attending and volunteering their time. Justice Márquez is the Task Force chair. She also thanked members of the planning committee for assisting her with preparations for this launch since March. The planning committee includes David Stark, Dawn McKnight, Jessica Yates, Jonathan (Jon) White, Margaret Funk, Ryann Peyton, and Sarah Myers. Prior to their retirements, former Attorney Regulation Counsel James (Jim) Coyle and the former Executive Director of the Colorado Lawyer Assistance Program (COLAP) Barbara Ezyk were members of the planning committee.

This Task Force convenes following the release of the Report of the National Task Force on Lawyer Well-Being, *The Path to Lawyer Well-Being, Practical Recommendations for Positive Change*, in August 2017. Mr. Coyle co-chaired the National Task Force, and Ms. Myers was a member. Mr. White was its staff attorney. Following the report's publication, Mr. Coyle approached then-Chief Justice Rice regarding the formation of a group in Colorado to address the recommendations in the National Task Force's report. Chief Justice Rice suggested that the liaison justices to the Colorado Supreme Court Advisory Committee, Justice Márquez and Justice Coats, explore the formation of a task force. Justice Coats is now Chief Justice and Justice Márquez became the chair of the Task Force.

Justice Márquez asked the Task Force to think critically about the following topics as a part of the launch of this new initiative:

- What does lawyer well-being mean, and how do we define this term?
- What barriers exist to lawyer well-being in the Colorado legal community?
- What concrete ideas and recommendations do members have for improving the well-being of Colorado's lawyers, judges, and law students?
- How does this Task Force measure success on the issue of lawyer well-being?
- Should the Task Force issue a report at the conclusion of its work in the spring of 2020?

There will be a charging order for the Task Force issued by the Colorado Supreme Court. Justice Márquez would like to see the Task Force form distinct working groups built around constituencies (the bench or law firms, for example), and issues. To that end, she encouraged members who might have an interest in a specific objective to reach out. If the Task Force believes that continuing legal education is one way to promote the message about lawyer well-being, it should be cautious about mandating well-being continuing legal education. She also urged members to think about what more information we need to know about the problem.

Justice Márquez reviewed the meeting agenda and ground rules. She asked members contribute authentically, honestly, and respectfully. In order to preserve confidentiality, minutes of the Task Force will not identify a member by name with his or her comments. She also asked members to be present and avoid distractions during meetings.

In terms of logistics, a webpage is under development that will provide information about the Task Force to the public. It will include meeting minutes. Justice Márquez also mentioned that she is co-authoring an article on the Task Force and the new national conversation about lawyer well-being with Mr. White. The University of Denver Law Review plans to publish the article after the first of the year. She mentioned that she and Mr. White may fold themes and priorities from this meeting into the article. Future meetings of the Task Force will occur on November 7, 2018, and February 6, 2019. These will be from 1:00 to 3:00 p.m. The November meeting will be in the Colorado Supreme Court's Fourth Floor Conference Room. Beginning in 2019, the Task Force will meet in a conference room in the adjacent Ralph Carr Building.

Justice Márquez gave an overview of why well-being matters from her perspective on the bench. She said that well-being correlates to a judge's performance and ensuring fairness to parties to a dispute. Professional isolation is also a struggle for judges. From her service as a liaison justice to the Colorado Supreme Court Advisory Committee, she commented that it is not unusual to see a connection between lawyer discipline and well-being. She noted that lawyers often place client needs before their own, which can be detrimental to lawyers and ultimately the clients they serve. In addition, this profession rewards and glorifies workaholism, and today's highly connected world adds to this workaholism by creating pressure to respond to messages at all hours. Many lawyers are also perfectionists, and perfectionist tendencies can be a source of stress.

## **II. National Trends in Lawyer Well-Being**

Mr. White, Professional Development Counsel at the Office of Attorney Regulation Counsel, presented on national trends and data related to lawyer well-being. The release of several studies in recent years inspired this discussion. First, the American Bar Association Commission on Lawyer Assistance Program (ABA CoLAP) and the Hazelden Betty Ford Foundation sponsored a study of nearly 13,000 lawyers in nineteen states. Lawyers were surveyed through state bar associations. Colorado lawyers were among those surveyed. Results of the survey released in 2016 showed more than a quarter of lawyers experience depression, and

nineteen percent severe anxiety. The same survey showed that 21 percent of lawyers, and 32 percent of lawyers under the age of 30, engage in problematic drinking, which is defined using World Health Organization metrics as drinking that is hazardous and indicative of potential dependence.

Also in 2016, the Survey of Law Student Well-Being was published in *The Journal of Legal Education*. This survey covered approximately 3300 students at 15 different law schools nationwide. It, too, showed marked levels of depression, and more than a third of students reported mild, moderate, or severe anxiety. Mr. White further highlighted the results of a survey conducted in November 2017 on the well-being of students at Harvard Law School. The survey involved 886 respondents out of total enrollment of 1,990 students. 24.2 percent of students surveyed reported anxiety; 25 % indicated they struggled with depression; and 20.5 % were at a heightened risk of suicide. Sixty-six percent reported new mental health challenges in law school.

Mr. White also discussed data from a survey of Yale Law School students in 2014 on mental health issues. 296 students out of 650 total at the law school responded. Seventy percent reported mental health issues in law school. Eighty-one percent said that they were reluctant to be open with faculty regarding mental health issues due to stigma, and the same percentage reported that they did not understand what mental health disclosures on bar applications required.

The data from the two surveys conducted in 2016 prompted the formation of the National Task Force on Lawyer Well-Being with support from ABA CoLAP, the National Organization of Bar Counsel, and the Association of Professional Responsibility Lawyers. Additional organizations have lent their support to the National Task Force, including the ABA's Center for Professional Responsibility and the National Conference of Chief Justices.

### **III. Stress in the Legal Profession and Defining “Well-Being”**

Dr. Eve A. Wood has 35 years of experience working with lawyers, judges, and law students. Her goal is to contribute to the Task Force's conversation about how to save the lives of colleagues in need. In thinking about what “well-being” means, she emphasized that the many definitions have consistent themes. First, well-being is not just the absence of disease. It is more expansive. Second, it is an ongoing process across life dimensions (health, emotions, social support, occupation), a concept emphasized by the National Task Force. At a minimum, the idea conveys positive life perspectives and the absence of negative emotions, such as anxiety. It also connotes satisfaction and fulfillment. Dr. Wood discussed a “bio-psych-social” model of well-being used in medicine that pertains to health of the body, mind, and spirit.

Dr. Wood examined the issue of stress as it relates to lawyers and all Americans. National Institutes of Mental Health data shows one in five Americans lives with a mental illness. Suicide rates are on the rise in nearly every state. Colorado saw the highest amount of suicides ever in 2016, with 1,156 Coloradoans taking their lives that year. Dr. Wood emphasized that more than half of people who commit suicide do not have a diagnosed mental health

disorder. She reflected on national data of lawyer and law student mental health and substance use and said that the figures show one-third of lawyers deal with depression, anxiety, extreme stress, or alcohol misuse. Suicide rates are higher in law than other professional occupations. Dr. Wood also shared some general observations from her work treating lawyers and judges.

Dr. Wood addressed whether stress can cause depression, anxiety, and burnout. Normal or episodic stress is something humans can recover from. We are resilient creatures. However, extreme and persistent stress has toxic effects. Dr. Wood discussed the Maslach Burnout Inventory, considered the standard means of measuring extreme stress. She also reviewed symptoms of burnout, and noted that according to the Mayo Clinic, a person's supervisor at work is more important to his or her health than a family doctor. Dr. Wood surveyed specific recommendations in the report of the National Task Force, including destigmatizing help-seeking and expanding education on well-being and mental health issues. She concluded with a call to action whereby if this Task Force causes law students, lawyers, and judges to "judge their lives more positively," it will have succeeded.

#### **IV. A Perspective on Well-Being Trends in the Law Schools**

Patty Powell, former associate dean of student affairs at the University of Denver Sturm College of Law, spoke regarding the struggles she observed law students work to overcome. She discussed external and internal challenges placed on law students. Externally there are grades and the academic curve, competition for employment, and student loans. Internally, some students struggle with test and performance anxiety, which can impair to success though they are highly motivated and intelligent. Certain students are more introverted than others, which can be a challenge in classrooms that rely on the Socratic method. She said students from diverse backgrounds and those who are the first in their family to attend law school sometimes find adapting to the law school environment particularly challenging, which is an additional stressor that builds on external pressures they face. Further compounding these external and internal pressures is the feeling that students cannot show vulnerability. Ms. Powell suggested that tackling the external pressures and their negative impact is one method of improving law student well-being.

Ms. Powell explained that there is wider acceptance of prioritizing well-being at the law school level. There are more resources available to students experiencing mental health and substance use disorders, as well as undergoing the normal stress of law school. In one unique example, she mentioned law schools bringing in therapy dogs at the time of final exams. This semester at DU Law School, Professor Debra Austin is teaching a class on professionalism, well-being, and effective lawyering. Professor Austin is a member of this Task Force. Ms. Powell encouraged the Task Force to look at eating disorders among the many issues it addresses. She noted this is a more pronounced issue than many lawyers and faculty realize.

Last, Ms. Powell encouraged Task Force members who have suffered from a mental health or substance use disorder to tell their stories. This affirms that well-being issues touch many in the profession. Personal stories can prompt others to be more comfortable seeking help.

## **V. A Regulator’s Perspective on Lawyer Well-Being**

Ms. Yates, Attorney Regulation Counsel, said that many lawyers suffer from diminished well-being. This is the case even if this diminished well-being does not come to the attention of the Office of Attorney Regulation Counsel through a complaint raising professional misconduct issues. Certain cases feature incredibly difficult personalities or subject matter. This creates stress for many lawyers that can lead to poor personal or professional decisions. Ms. Yates said it is not uncommon that a mental health or substance use disorder attends a professional discipline matter. For example, an untreated substance use or mental health disorder can lead to a lawyer failing to communicate with a client for weeks or months. In other situations, poor well-being reveals itself in toxic discovery disputes, brazen behavior towards judges, and threats against other lawyers which can become the subject of professional discipline. She further addressed the stress caused by the financial aspect of law practice. This can lead to lawyers commingling client funds with personal and business funds or taking cases that they should not take because they feel pressured to do so. Ms. Yates concluded that this Task Force provides the opportunity for lawyers in Colorado to get on better, healthier, more sustainable paths.

## **VI. Overview of Responses to Survey Questions**

Members of the Task Force were asked to complete an anonymous, online survey on lawyer well-being prior to this meeting. The survey featured the following five questions:

1. Why did you get involved in the Task Force?
2. How do you define lawyer well-being?
3. What do you think are the barriers to well-being in the legal profession?
4. What do you think the profession is doing well regarding lawyer well-being? Are there projects or efforts underway that the Task Force should know about?
5. What ideas or goals do you have for the Task Force? If you had to write the headline for an article touting the Task Force’s accomplishments 18 months from now, what would it say?

Justice Márquez shared general information about the responses. As for reasons for getting involved in the Task Force, members said that they were concerned for the profession in light of these trends and felt that well-being in the profession had declined. One respondent remarked: “I care deeply about the ‘secret’ of lawyer addiction, mental illness, and end of practice problems. We need to start the conversation and take it public and provide help for those who are suffering in silence and agony.” Several shared they were interested in bringing their professional experience and expertise to the subject. Others said that they were compelled to get involved based on how this topic has impacted them personally and professionally. Still others remarked that public confidence in the profession and the profession’s overall longevity depends on addressing this issue. One member said: “lawyer well-being is critical to the survival of our profession and our ability to serve the public.”

On the second question, how do you define lawyer well-being, quite a few members viewed this as a multi-faceted concept pertaining to physical, mental, emotional, and spiritual health. Others emphasized the idea of having work-life balance. Additional themes included having supportive and inclusive working environments and a sense of connection to oneself, to others, and to a broader community.

The third question pertained to perceived barriers and challenges on the issue of lawyer well-being. Here, Task Force members raised quite a few concerns. Many referenced a professional culture of being overworked and endlessly competing. This interferes with lawyers' time to care for themselves. The billable hour model is also an impediment, with one member commenting that this metric does not correlate to the efficiency of one's work. The same member noted there are no alternative performance standards. Another member wrote that working in law "[s]uggests that if you can't work 80 hours a week, then you aren't tough enough to be a lawyer." In addition, technology has created the expectation of immediate response. Members cited the stigma associated with reaching out for help, and they said that there is a pervasive drinking culture associated with professional gatherings. Others commented on the lack of civility in the profession as a challenge to overall well-being. Still others felt that there is implicit bias in the profession with few individuals from diverse backgrounds in leadership.

Finally, on this third question, many members said that the perfectionism embedded ingrained in the legal profession is a pronounced source of stress. A member wrote:

I think the profession places unrealistic expectations on attorneys of all levels, to be perfect, to know the future, to never lose, to be infallible, to work like a dog and love every second of it. I think the risk for failure is high and the punishments for slipups are unforgiving. I think the stress drives attorneys to coping mechanisms such as alcohol and drug abuse.

Members identified numerous positive steps taken in Colorado to improve lawyer well-being. These include the creation of the Colorado Lawyer Assistance Program (COLAP) and the Colorado Attorney Mentoring Program (CAMP), and Lawyers Helping Lawyers. In addition, inns of court have worked to promote greater professionalism and connectedness, as has the CBA/DBA Professionalism Coordinating Council. Other positive strides include a "Fit2Practice" initiative of the Young Lawyers Division, and classes and committees on student wellness at both law schools. The Denver Mother Attorneys Mentoring Association (MAMA) has also been helpful.

Goals and priorities identified by members for the Task Force over the next eighteen months include gathering more data on lawyer well-being, developing better support for rural practitioners, considering making well-being programming a larger part of continuing legal education, and crafting guidelines or a pledge for legal employers to use to highlight progress on lawyer well-being. Some members suggested working to tackle the stigma associated with reaching out for help. One recommendation was to create a professionalism school for lawyers with 10 or more years of practice.

## VII. Reports from Group Discussions

The Task Force met in small groups for 20 minutes to discuss three questions:

- (1) How should the Task Force define well-being for legal professionals?
- (2) What priorities and objectives should the Task Force focus on?
- (3) What additional data or information would help the Task Force to obtain?

Each group discussion leader then presented on key discussion items for the table as follows:

### Group 1 (Discussion leader David Stark)

This group identified the following as components of the definition of “well-being”:

- Feeling well and doing well;
- Whether success is driven by money or by a meaningful career;
- The failure of “wellness” is stress, anxiety, and depression;
- “Wellness” requires resilience;
- Many do not know what a good lawyer is and thus have a hard time defining “wellness” in our profession;
- Leadership skills should help to insure wellness; and
- “Wellness” aligns with professional identity and professionalism.

The group raised the following potential priorities:

- Diversity: we don’t have any statistics on disability, race, gender identification, etc. Perhaps Attorney Registration could get this information.
- Draft a “wellness” program for legal employers that could be replicated.
- Get input from various stakeholders using a conference to receive information and to get the word out.
- Use a multi-level campaign to publicize our principles. This could include articles, road shows, and conferences.
- Meet with law firm managing partners and those in charge of government and in-house legal employers to sell the program. We must explain how “wellness” is good for risk management and the bottom line.
- Gather the data necessary to support the need to pursue and meet the above goals. More research and study is needed in this emerging field.

### Group 2 (Discussion leader Sarah Myers)

This group felt that the definition of well-being should include reference to having self-reflective skills and feeling comfortable asking for help. The group also believes that concepts of life fulfillment and meaningfulness are important to the definition.

Looking at tasks for the larger group, this table discussed potentially creating a platform for lawyer peer assistance. It also suggested developing more student-focused resources. Another priority that emerged was building greater networks in rural areas to connect lawyers to help and therapy. In addition, this group recommended examining low-cost therapy. The cost of getting help has been shown to be a deterrent for many individuals. The group also recommended developing alumni programming on well-being that accomplishes another important goal: reducing the isolation many lawyers feel in practice.

### Group 3 (Discussion leader Ryann Peyton)

In looking at the first question, how to define lawyer well-being, the group could not fully “define” well-being for purposes of the Task Force. However, the group aligned on common themes that should be included any future working definition. Those themes included:

- Work/life integration;
- A sense of “being well” in all aspects of life;
- A sense of control in day-to-day demands on time, attention, and resources;
- A sense of empowerment & resiliency;
- Any definition should be inclusive of varying ages and experience levels within the profession. This is not a concept unique to young lawyers, and what works for young lawyers may not work for more veteran lawyers. Meet people wherever they are in their personal definition of well-being.

In terms of end goals, Group 3 identified the following:

- An evaluation or assessment of the well-being issues specific to the Colorado legal community.
  - The group wants the ability to make data-driven decisions and there is little to no data specific to lawyer health and wellness in Colorado.
  - Evaluate whether there is the potential to partner with a larger university through sociology or other research departments. Can the legal community effectively measure its own well-being?
  - Identify the pressure points of the profession that most impact lawyer well-being.
- Solutions focused on the unique financial pressures of the profession:
  - Navigating massive student loan debt;
  - Providing young lawyers at large firms very large sums of compensation in exchange for unhealthy billable expectations;
- Spotlight JD-advantage/non-traditional legal careers and examine whether and why these lawyers identify as having greater well-being.
- Any end result of the task force should include a multi-modal and multi-messaged approach to reach a diverse segment of the legal community.
- There should be a focus on “Visibility, Empowerment, and Engagement.”
  - Results should include: peer-to-peer connection opportunities and partnerships;



- Assist lawyers in overcoming isolation and creating community;
- Promote personal stories of overcoming adversity.

Looking at the third question, the group agreed the following information would be helpful:

- We want to know who is going to pay for these solutions. What funding sources are available?
- What delivery platforms are available?
- We need more data that is Colorado-specific.

Group 4 (Discussion leader Jessica Yates)

Group 4 did not reach the question of how to define well-being for legal professionals. However, the group flagged a number of areas of concern and priorities. These included:

- How to handle situations when opposing counsel is acting out. Can the Task Force identify tools/training to confront the issue?
- Law is “consuming.” How can lawyers institutionalize more balance in the profession?
- Law has lost its sense of community. There used to be natural support systems. We now have an epidemic of loneliness and isolation. How can the Task Force create more connectedness? Can the Task Force, with the support of other legal institutions, create a “contract” for conduct much like the social contracts we used to have in law?
- California has mandatory CLE for recognizing and mitigating substance abuse. Should the Task Force consider that?
- Also, what can be done to destigmatize mental illness so people will come forward for help?
- Should the Task Force change how these issues get messaged? Being nicer to people we deal with in law has economic benefits.
- What can be done to change the culture of law schools, particularly the immense pressure to be perfect and perform at the top of your class?
- Law firm hiring practices are too tied to strong law school performance. Is it possible to deemphasize class rank and emphasize other qualities?
- Law schools compete on bar passage rates and job placement rates. Is there a way to nationalize rankings on well-being so that they are competing on well-being? Can there be metrics associated with that?
- Can terms such as “burn out” or other non-stigmatizing terms be used to encourage people to come forward with feelings of stress and isolation?
- Perhaps law firms or the bar should consider a professional survey to get a sense of the scope of the problem in Colorado?
- Is it possible to do some “forced screening” through renewing the law license or CLE affidavits on the scope of the problem?

#### Group 5 (Discussion leader Margaret Funk)

This group did not feel the need to re-work or add to the definition of “lawyer well-being.” The definition presented by the National Task Force on Lawyer Well-Being works well.

In response to the question regarding priorities, this group felt that there were several concrete objectives to consider:

- A pledge to well-being;
- Restrictions on the number of billable hours a lawyer can work;
- Offering greater access to recreation, such as through a gym membership;
- Renewing lawyers’ commitment to pro bono legal services and reminding them that often lawyers find great satisfaction in pro bono and volunteer work;
- Trainings that promote greater civility;
- Greater mentorship for younger lawyers and investment in younger lawyer needs;
- Provide lawyers with more information on COLAP and CAMP’s offerings.

#### Group 6 (Discussion leader Jon White)

Group 6 met via teleconference. This group viewed the concept of “work-life balance” as emblematic of lawyer well-being. The current definition from the National Task Force on Lawyer Well-Being is very broad. Well-being is about the need to create balance.

This group identified priorities for the Task Force to include increasing access to well-being resources, especially in rural areas. This will require a corresponding emphasis on destigmatization and combating the isolation lawyers experience in rural areas. Training lawyers to manage the stress of the practice was another potential objective. The group also recommended exploring CLE programming in this area. Young lawyers and “onboarding” into a professional career was another area of interest.

More information about what programs other states have adopted to bolster lawyer well-being would be useful. This group also recommended reaching out to agencies and local bar associations to assess what they believed would be helpful in furthering this discussion.

### **VIII. Conclusion**

Justice Márquez thanked members for their time and contributions to the discussions at the meeting. The next meeting will take place November 7, 2018, in the same location. Minutes from this meeting will be distributed, along with PowerPoint slides.